

redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NO<sub>x</sub> emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the USEPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by USEPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation [section 173(b) of the Act] and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

#### D. Procedural Background

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). A revision to the SIP processing review tables was approved by the Acting Assistant Administrator for Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators). A future action will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of 2 years (54 FR 2222). The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continued in effect under Executive Order 12866 which superseded Executive order 12291 on September 30, 1993.

#### E. Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. section 603 and 604. Alternatively, the USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I

certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 1994. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule. This action may not be challenged later in proceedings to enforce its requirements. (section 307(b)(2).)

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Hydrocarbons, Intergovernmental relations, Carbon monoxide, Motor vehicle pollution, Particulate matter, Reporting and record keeping requirements.

##### 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: June 24, 1994.

**David A. Ullrich,**

*Acting Regional Administrator.*

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#### 40 CFR Part 300

[FRL-5017-2]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the C&J Disposal site from the National Priorities List: request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) Region II announces its

intent to delete the C&J Disposal site from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the C&J Disposal site to date have been protective of public health, welfare, and the environment.

**DATES:** Comments concerning the deletion of the C&J Disposal site from the NPL may be submitted on or before August 19, 1994.

**ADDRESSES:** Comments concerning the deletion of the C&J Disposal site from the NPL may be submitted to: Jack O'Dell, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 29-102, New York, NY 10278.

Comprehensive information on the C&J Disposal site is contained in the EPA Region II public docket, which is located at EPA's Region II office (room 2900), and is available for viewing, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. For further information, or to request an appointment to review the public docket, please contact Mr. O'Dell at (212) 264-1263.

Background information from the Regional public docket is also available for viewing at the C&J Disposal site's Administrative Record repository located at: Hamilton Village Public Library, 13 Broad Street, Hamilton, NY 13346.

#### Supplementary Information

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- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion

#### I. Introduction

EPA Region II announces its intent to delete the C&J Disposal site from the NPL and requests public comment on this action. The NPL is Appendix B to the NCP, which EPA promulgated pursuant to Section 105 of CERCLA, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL

may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (the "Fund"). Pursuant to Section 300.425 (e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at such site warrant action.

EPA will accept comments concerning the C&J Disposal site for thirty (30) days after publication of this notice in the **Federal Register** (until August 19, 1994).

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the C&J Disposal site meets the deletion criteria.

## II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR Section 300.425 (e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

1. That responsible or other persons have implemented all appropriate response actions required; or
2. All appropriate Fund-financed responses under CERCLA have been implemented, and no further cleanup by responsible parties is appropriate; or
3. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

## III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist agency management.

The following procedures were used for the intended deletion of the C&J Disposal site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.
2. The State of New York has concurred with the deletion decision.
3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other

interested parties. This notice announces a thirty (30) day public comment period on the deletion package starting on July 20, 1994 and concluding on August 19, 1994.

4. The Region has made all relevant documents available in the regional office and the local site information repository.

EPA Region II will accept and evaluate public comments and prepare a Responsiveness Summary which will address the comments received, before a final decision is made. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions.

If, after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next update. Public notices and copies of the Responsiveness Summary will be made available to local residents by EPA Region II.

## IV. Basis for Intended Site Deletion

### *Site History and Background*

The C&J Disposal site, located in the Town of Eaton, Madison County, New York, included a rectangular disposal trench which measured approximately 140 feet by 40 feet. The disposal trench was situated between a former railroad bed and an active agricultural field, and was on property immediately adjacent to residential property owned by C&J Leasing of Paterson, New Jersey. Approximately 100 feet south of where the trench was located is a small pond and adjacent wetlands which drain to Woodman Pond, a back-up water supply for the Village of Hamilton. There are twelve residences in the vicinity and downgradient of the site which use private wells as their source of drinking water.

During the 1970s, the trench area was used for the disposal of industrial wastes, although never licensed or permitted for that purpose. In March 1976, C&J Leasing was observed dumping what appeared to be paint sludges and other liquid industrial waste materials into the trench. An inspection of the site by the New York State Department of Environmental Conservation (NYSDEC) and the Village of Hamilton engineer revealed 75–100 drums lying in a pool of liquid waste. The trench was subsequently covered with fill, reportedly by C&J Leasing, apparently burying the drums observed in March 1976.

Sampling was conducted at the site by NYSDEC in 1985 and by EPA in 1986. Surficial soil samples obtained from the site revealed the presence of phenolic compounds, phthalates, various volatile organic compounds (VOCs), polynuclear aromatic hydrocarbons (PAHs) and lead. One of the phthalates, bis (2-ethylhexyl) phthalate, and elevated levels of lead were detected in the sediments of the small pond. The sampling of local residential wells in 1986 and later in 1988, by the New York State Department of Health (NYSDOH), did not detect any contaminants from the site.

The site was placed on the NPL in March 1989.

In April 1989, prior to the start of the RI/FS, the site was subject to an unauthorized excavation by the principals of C&J Leasing, leaving two large holes and three stockpiles of soil and waste material. The drums that were believed to have been previously buried may have been removed at this time, or earlier, and taken off-site. An extensive follow-up investigation failed to determine where the drums may have been taken.

In October 1989, EPA initiated the RI/FS. Results from the RI indicated that the contaminants at the site were confined to the waste disposal trench, with the exception of some low levels of contamination in the sediments of the small pond. The total volume of waste material and contaminated soil and debris in the disposal trench was estimated at 1,250 cubic yards (i.e., contained in the area of 140 feet by 40 feet and to a depth of 6 feet). The waste was determined to be non-uniformly distributed and comprised of soil mixed with a light-colored, friable, plastic-like residue and/or a similar synthetic matter, crushed drums and plastic bags (drum liners) contaminated with the same or similar plastic residue, and some wood debris.

The primary contaminants found in the trench area were various phthalates (i.e., bis(2-ethylhexyl) phthalate, di-n-octylphthalate, and di-n-butylphthalate), phenols (i.e., 2,4-dimethyl phenol, and 4-methylphenol) and VOCs (i.e., benzene, ethylbenzene, toluene, xylenes, and 4-methyl-2-pentanone). Lead, which was found at elevated levels during limited testing by EPA in 1986, was detected above background levels in only one sample during extensive RI sampling. Lead was also found at significantly elevated levels during EPA's post-RI sampling in 1991. A wide variety of PAHs were also found in the disposal trench and in surrounding surface soils. Since the PAHs were attributable to the old

railroad bed (due to their association with products used for railroad construction, operation, and maintenance, as well as where the PAHs were located at the site), they were considered to be background.

While some of the waste materials in the trench were in direct contact with the shallow ground water, the contaminants were found to be bound in the waste material and/or adsorbed to the adjacent soils and, therefore, were not migrating to the ground water from the trench. Extensive chemical analysis of the eight local residential wells (serving twelve residences) during the RI confirmed the prior results (i.e., that no contaminants from the site had migrated to these wells). Seven ground-water monitoring wells (four shallow and three deep), including one well in the center of the trench, also indicated no migration of contaminants from the trench to the ground water.

Testing of the water in the small pond indicated no migration of soluble contaminants from the site. The low levels of bis(2-ethylhexyl) phthalate and lead found in the sediments in the pond were attributable to overland soil transport by surface-water runoff.

The RI concluded that the potential for direct human and animal exposure, as well as the potential for future contaminant migration to the ground water and surface water, existed at the site and there were no permanent controls in place to prevent contaminant migration from the trench as a result of any deterioration or disturbance of the waste.

Following completion of the RI/FS, site security was upgraded by EPA. The upgrade included installing two locked gates, additional fencing, and posting of warning signs to restrict access of unauthorized persons. Also at this time, EPA performed additional sampling at the site, in preparation for the off-site disposal/treatment of the contaminated soil and debris.

On March 28, 1991, a Record of Decision was signed, selecting as the remedy for the site the excavation and removal of approximately 1,250 cubic yards of contaminated soil and debris, followed by its transportation to a permitted, Resource Conservation and Recovery Act-compliant waste management facility for treatment/disposal. The selected remedy included backfilling the trench with clean soil, re-vegetating the area, and quarterly monitoring of the ground water and downgradient residential wells for a period of one year. In addition, no remediation of the small pond was necessary because of the insignificant amount of contaminants in the

sediments and because of the adverse impact excavation would have on the pond and its ecosystem.

Following the completion of the remedial design (RD) in August 1992, the remedial action (RA) commenced. Over the course of the RA, which was completed in June 1993, over 2,400 cubic yards of contaminated soil and debris (i.e., 173 truckloads containing 3,514 tons of material) were removed from the site. No intact drums were encountered during the excavation. Analysis of samples collected from monitoring wells located downgradient of the disposal trench two weeks after backfilling the trench indicated no contaminants had migrated to the wells as a result of excavation activities. Post-RA sampling by NYSDOH, as well as post-RA quarterly sampling by EPA, also indicated no contamination migration to residential wells.

#### *Summary of Community Relations Activities*

Overall, there has been moderate community interest shown with respect to activities at the site. Initially, interest was high due to the unauthorized excavation at the site, reports of neighborhood children playing at the site, the possibility of contaminated wells in the neighborhood, and the potential to pollute Woodman Pond (which, in part, contributed to the Village of Hamilton's decision to install municipal wells instead of continuing to use Woodman Pond for municipal drinking water). Interest in the site declined, however, when the testing and re-testing of local residential wells indicated that no contaminants attributable to the site were present in local wells, visible improvements were made in site security, and on-going contact was maintained with local officials and the community. At a public meeting on February 13, 1991, EPA presented the results of the RI/FS and identified the preferred remedial alternative for the site. The remedy presented for the site was extremely well received since it satisfied the prior requests of local officials and citizens for the complete removal of the chemicals at the site from their community.

#### *Summary of Operation and Maintenance and Five-Year Review Requirements*

There are no operation and maintenance requirements since all remediation activities have been completed. Because the implemented remedy does not result in hazardous substances remaining on-site above

health-based levels, the five-year review does not apply.

#### *Summary of How the Deletion Criteria Has Been Met*

Residential well monitoring since 1986 has consistently indicated no contaminant migration to any of the local residential wells from the site. RI and RD sampling results indicated no site-related contaminants in on- or off-site monitoring wells. One year of post-RA quarterly sampling completed by EPA in January 1994 did not show any contaminants from the site in either the on-site monitoring wells or the local residential wells.

The primary pathways that threatened public health at the C&J Disposal site were direct exposure and possible ingestion of the chemicals at the site, as well as the possible future contamination of the ground water and local wells and the impact to the local environment from deterioration or disturbance of the contaminated waste. The results of the post-RA monitoring confirm that excavation and removal of the contaminants of concern from the C&J Disposal site renders both current and future pathways incomplete.

EPA and the State have determined that the response actions undertaken at the C&J Disposal site are protective of human health and the environment.

In accordance with 40 CFR Section 300.425(e), sites may be deleted from the NPL where no further response is appropriate. EPA, in consultation with the State, has determined that all appropriate responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Having met the deletion criteria, EPA proposes to delete the C&J Disposal site from the NPL.

Dated: July 1, 1994.

**William J. Muzynski,**

*Acting Regional Administrator.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

#### 42 CFR Part 1001

#### RIN 0991-AA74

### Medicare and State Health Care Programs: Fraud and Abuse; Clarification of the OIG Safe Harbor Anti-Kickback Provisions

AGENCY: Office of Inspector General (OIG), HHS.